

Rule 105. Discretionary Review**105.01 Petition for Permission to Appeal; Time**

Upon the petition of a party, in the interests of justice the Court of Appeals may allow an appeal from an order not otherwise appealable pursuant to Rule 103.03 except an order made during trial, and the Supreme Court may allow an appeal from an order of the Tax Court or the Workers' Compensation Court of Appeals not otherwise appealable pursuant to Rule 116 or governing statute except an order made during trial.

Petitioner must, within 30 days of the filing of the order:

1. serve a copy of the petition on the adverse party;
2. file the petition with the clerk of the appellate courts; and
3. pay a filing fee of \$550 to the clerk of the appellate courts.

Petitioner shall also at the same time file a copy of the petition with the trial court administrator and file proof of that filing with the clerk of the appellate courts.

(Amended effective July 1, 1989; amended effective July 1, 1993; amended effective March 1, 2001; amended effective July 1, 2003, for all filings on or after that date; amended effective July 1, 2014.)

See **Appendix** for form of petition for discretionary review (**Form 105**).

Comment - 1983

A petition for discretionary review must be filed with the clerk of the appellate courts within 30 days after filing of the order.

Because a request for discretionary review of an interlocutory or other nonappealable order is usually prompted by some exigency and because it is not customary to give notice of making and filing of nonappealable orders, a petition for review must be served and filed with the clerk of the appellate courts within 30 days after the order was filed with the clerk of the trial court.

See Appendix for form of petition for discretionary review (Form 105).

105.02 Content of Petition; Response

The petition shall be entitled as in the trial court, shall not exceed 10 typewritten pages, and shall contain:

- (a) a statement of facts necessary to an understanding of the questions of law or fact determined by the order of the trial court;
- (b) a statement of the issues; and
- (c) a statement why an immediate appeal is necessary and desirable.

A copy of the order from which the appeal is sought and any findings of fact, conclusions of law, or memorandum of law relating to it shall be included in an addendum, which shall be prepared as prescribed in Rule 130.02.

Any adverse party may, within 5 days after service of the petition, serve and file with the clerk of the appellate courts a response to the petition, which shall not exceed 10 pages. Any reply shall be served within 3 days after service of the response and shall not exceed 5 pages. All documents

may be typewritten in the form prescribed in Rule 132.02. No additional memoranda may be filed without leave of the appellate court.

A copy of the response and any reply shall also be filed with the trial court administrator, and proof of that filing shall be filed with the clerk of the appellate courts.

The petition and any response shall be submitted without oral argument unless otherwise ordered.

(Amended effective for appeals taken on or after January 1, 1992; amended effective January 1, 1999; amended effective March 1, 2001; amended effective July 1, 2014.)

Advisory Committee Comment - 1998 Amendments

The rule has been amended to change the responsive time from seven to five days to be consistent with the time to file a response to a petition for an extraordinary writ and to a motion. See Minn. R. Civ. App. P. 120.02, 127. The two-day period to file a reply is added to be consistent with the provision for a reply in the rule on motions. See Minn. R. Civ. App. P. 127. Because intervening weekends and holidays are not counted when the time for response is less than seven days, the change will not shorten the time for response, and may actually lengthen it in some cases. See Minn. R. Civ. App. P. 126.01.

Advisory Committee Comment - 2000 Amendments

Rule 105.01 is changed to authorize petitions to the Supreme Court seeking discretionary review of nonappealable orders of the Tax Court and the Workers' Compensation Court of Appeals. The Court has noted the advisability of such a provision. See Tarutis v. Commissioner of Revenue, 393 N.W.2d 667, 668-69 (Minn. 1986). The amendment to Rule 105.02 clarifies that the petition should not be accompanied by a separate memorandum of law, expands the page limit for the petition to ten pages and specifies page limits for the response and reply.

105.03 Grant of Permission - Procedure

If permission to appeal is granted, the clerk of the appellate courts shall notify the trial court administrator and then proceed as though the appeal had been noticed by filing an appeal. The statement of the case shall be filed within 5 days of the order granting the petition. The time fixed by these rules for filing and serving the briefs shall run from the date of the entry of the order granting permission to appeal.

(Amended effective for appeals taken on or after January 1, 1992; amended effective July 1, 2014.)

Comment - 1983

The filing of two copies of a completed statement of the case is required within five days from the date of the order granting the petition for discretionary review.

Advisory Committee Comment - 2014 Amendments

Rule 105 is amended to accommodate the changes brought about by use of electronic service and filing in the appellate courts. As part of these changes, and in anticipation of the expanding reliance on electronic records by the appellate courts, the courts have determined that multiple copies of many documents are no longer required.

Throughout these rules, the requirement for filing a statement of the case is now limited to a single copy, whether filed in electronic form or on paper. The amendment to Rule 105.03 applies this change to filings for discretionary review.

By amendment to Rule 107, cost bonds are not routinely required for appeals under these rules, and are not currently required for petitions under this rule. Rule 105.03 removes the requirement for a cost bond in the event the petition is granted.

The amended rule clarifies the duty to "provide" a copy of the petition to the trial court, requiring that it be filed with the trial court administrator. The same is required for any response or reply to the petition. Because this copy of the petition is filed with the trial court, it is permissible under Rule 125.01(d), as adopted at the time of these amendments, to effect service of it on other parties by any means authorized by the trial court rules. This rule permits service by the trial court e-filing system, which should be useful for documents that may be filed with the trial court using the same system. Because that service would not result in proof of service being transmitted to the appellate courts' electronic filing system, separate proof of service must be filed with the clerk of the appellate courts.

Only a single copy of the petition and addendum need be filed. The time for a reply has been extended from 2 to 3 days after service of a response.

Rule 105.03 is amended to remove a provision relating to timing for transmitting the record to conform the rule to practice within the appellate courts. The date for transmitting the record is not currently calculated from the date of granting the petition, so this provision is deleted.